

(1954.) Department.

<u>Endorsement</u> D.O. <u>Memorandum</u> <u>Logged</u>		Inventory (attached pages)
Memo No. 40609 ^{HT} / 54. a Health		
Dated	1954	1954.

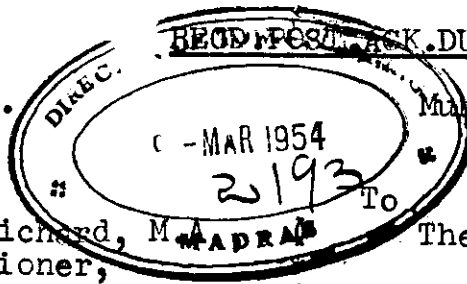
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FURTHER PAPERS.

Department.	Number.	Series.	Date.
Buildings	unauthorised construction of wooden		
Shop and vertical	post within - violation of Revised		
Building rules	- Council resolution - inform of the		
Construction	cause of the resolution		
requested			

REC'D POST. ACK. DUE.

E1/10070/53.



Municipal Office, Mangalore,
Dated 23rd Feb., 54.

From
Sri L. C. Richard, M.A. ADRA
Commissioner,
Mangalore Municipality.

To
The Secretary to Government,
Health Department,
M a d r a s.

Thro'

The Director of Town Planning, Madras,
The Chairman, Municipal Council, Mangalore.

Sir,

Sub: BUILDINGS - unauthorised construction of wooden bunk
shop and vertical posts within - violation of
Revised Building Rules - Council resolution - in
favour of the construction - cancellation of the
resolution - requested.

37
Sri Kudpi Srinivas Shenoy has constructed a wooden bunk
measuring 4' x 6' x 6½' on the front verandah of building T.S.
No.341 of 14th ward, and fixed 13 verticals measuring each 2
sq.in. to a height 4' on the I and II floor. As the said un-
authorised construction violates Rule 9(2) of the Revised
Building Rule 1942, Provisional order under section 216 of the
M.D.M. Act was issued to the party requiring him to demolish
the same and this order was confirmed in this office reference
E1/10070/53 dated 17-7-53. The party preferred an appeal to
the Municipal Council, under section 322 of the M.D.M. Act.
Council in its resolution No.5 dated 9-1-54 resolved in favour
of the party. The decision taken by the council is not correct
as it ultravires the provisions of the M.D.M. Act. Copies
of the report dated 10-8-53 and 20-1-54 from the Town Planning
Officer with whom I agree are submitted herewith. I request
that the Government may please cancel the resolution of the
council (copy enclosed) so as to enable the Executive Authority
to demolish the objectionable unauthorised construction.

The file of papers pages 66 relating to the subject are
enclosed for favour of reference and return when no longer
required.

Commissioner

Copy submitted direct to save delay.

Forwarded, The Joint Director of Town Planning was
shown these constructions during his last visit to Mangalore

Chairman, M.C.

Encls: 4.

S/26-2-Compd.

3
E1/10070/53.

Submitted:-

1. The final authority to decide whether a construction, alteration or reconstruction is an essential repair or not, is the Council under section 215(2) of the M.D.M. Act.

2. The temporary provision of the sun shades on the I and II floors do alter the position and the dimensions of the cantiliver verandah. They do contravene the provisions of the building Rule 9(2). Any structure within 4 ft. space or in the building line is a "construction" so far it does not come under the category of structures mentioned in the proviso 9(2) (within the brackets) or in the proviso 9(2)(b). The above mentioned structures do interfere with the ventilation and communication of external air required under rule 11(1) of the revised building rule.

3. The proviso under 9(2) is very clear. "Sun shades, balcony canopy, eaves or other similar projecting portion if no pillar, wall or other structure is erected in the open space for support. The sun shades referred to by the petitioner are glass shutters framed and supported on wooden pillars. This is not permitted within the open space.

On the above reasons council may reject the appeal under section 322(2) of the M.D.M. Act and declare that the so called repair referred to by the petitioner is not an essential repair, under section 215(2) and ordered to be demolished forthwith.

Council also may declare that the bunk shop is not a moveable structure and it is a construction which cannot be permitted within the front space. Though it may be a temporary structure it cannot be permitted within the front space as it does not come under the category of structures mentioned in proviso 9(2) of the Revised Building Rules.

Sd. K. I. George,
D/10-8-53
T.P.O.in-charge.

(True copy)

[Signature]
Commissioner

S/26-2.Comp'd. *[Signature]*
26-2

1

Submitted:-

The bunk shop constructed by Sri K. Srinivas Shenoy Managing Director, of Taj Mahal Cafe in T.S.No.34/1 Door No. 104 of 14th ward is a building and it cannot be admitted to be a structure not coming under the proviso of building rules. The office has rightly pointed out this unauthorised construction and has rightly taken action against the party. The ~~vertical~~ vertical pillars erected in the first and second floors also contravene the provisions of the Building Rule 9(2). Office has taken timely action against the party.

not finding

Council's view in this matter is not correct and the resolution No.5 dated 9-1-54 is in excess of its powers as council has ~~not~~ authority to act contrary to the statutory provisions of the M.D.M. Act and the Building Rules ~~fr~~ framed thereunder. With a view to discourage unauthorised constructions in this town, council ought to have rejected the appeal suo motto and taken further action against the party. It was left to the party to appeal against the decision of the council to the Director of Town Planning and get the grievances redressed. It was not proper to recommend an unauthorised construction to the Director of Town Planning, Madras when there is no application from the party either for a permission under section 197 of the M.D.M. Act nor an appeal to the Director of Town Planning under Revised Building Rule 15 of 1942 as amended for the exemption from the operation of Building Rule 9(2).

The resolution of the council may be got cancelled by the Government under section 36 of the M.D.M.Act.

1/30/1

Sd. K. I. George,
D/20-1-54.
T.P. & B.O.

(True copy)

[Signature]
Commissioner.

S/26-2.Comp'd. *[Signature]*

EXTRACT FROM THE PROCEEDINGS OF THE MEETING OF THE MANGALORE MUNICIPAL COUNCIL DATED 9TH JANUARY, 1954.

Read: E1/10070/53. Appeal petition dated 27-7-53 from Sri K. Srinivas Shenoy, Managing Director, New Taj Mahal Cafe against this office provisional order E1/10070/53 dated 15-6-53 and confirmation order E1/10070/53 dated 17-7-53 directing him to demolish the unauthorised construction of a wooden bunk and 13 verticals in T.S.No.341 ward of 14th ward along Hampankatta, and the connected files thereon.

Note: The appeal is in time.

Ad-hoc.Committee res.No.2 dated 3-12-53. The committee is of the opinion that a bunk shop is a building as defined in the M.D.M.Act even though it is put on wheels(vide I.L.R.S.Lahore 543). Therefore the erection of a bunk shop clearly violates rule 9(2) of the Revised Building Rules as pointed out by the office.

Regarding the 13 verticals the committee finds that they cannot be treated as temporary fixtures but as permanent fixtures fixed by clamps and bolts. But however in view of the fact that these verticals are put up on the first floor and does not obstruct any traffic, the Director of Town Planning may be addressed as to whether it would be permitted and does not violate rule 9(2) of the Revised Building rules as contended by the party.

C.R.No.5 dated 9-1-54. The question whether the bunk put up by the appellant on the verandah within the 4 ft. space is not ~~exceeding~~ a "building" and a violation of Building Rule 9(2) of the Revised Building Rules as contended by the appellant was put to the house. It was carried 15 voting for and 9 against and the rest remaining neutral. Sri B.S. Bhasker Rai demanded a poll and Sri Prabhaker Rai seconded it.

On a poll being taken the following councillors voted in favour of the appellant's said contention:- 1) Sri M. Govinda Pai, 2) Sri Kunhi Pakky, 3) Sri Madhava Kamath, 4) Sri B. R. Karkera, 5) Sri U. Ahmad Hussain, 6) Sri M. Srinivas Nayak, 7) Sri Salenna, 8) Dr. U.P.Mallya, 9) Sri Mohan Shenoy, 10) Sri J.B.D'souza, 11) Sri W.J.D'souza, 12) Srimathi Laura Pais, 13) Srimathi B.N.Pinto, 14) Srimathi Kalyani D.Shetty, and 15) Sri Umanath Suvarna. The following 9 councillors voted against the contention:- 1) Sri K. Vamana, 2) Sri P.M.N.Moorthy, 3) Dr. M. C. Shastri, 4) Sri M. Ramanath, 5) Sri J.B.Machado, 6) Sri B. S. Bhasker Rai, 7) Sri M. S. Dayaker, 8) Sri K. Prabhaker Rai and 9) Sri Madhava Suvarna. The following 6 councillors remained neutral:- 1) Dr. B.V.Mathias, 2) Sri Gajanan Rao, 3) Sri Ramanand Chooriya, 4) Dr. K. Nagappa Alva, 5) Sri Karyappa and 6) Sri Mithradas Hegde.

The appeal is therefore allowed regarding the appellant's right to keep the bunk by a majority vote. Sri Prabhaker Rai dissenting. Regarding 13 vertical supports ~~the~~ in the I and II floors the council decided as follows:-

"The council is of the opinion ~~xxxxxx~~ that the vertical supports are a violation of rule (2) of the Revised Building Rules and the contention of the appellant is not correct".

"The council is of the opinion that under special circumstances pointed out by the ad-hoc committee as a special case the violation of the Building Rule by the aforesaid vertical in the I and II floors may be condoned." Sri Prabhaker Rai dissenting.

Sd. K. S. N. Adiga,
Chairman.

(True copy)

[Signature]
Commissioner.

B/26-2.Comp. *[Signature]*
26-2

From
Sri T. Sivanandam, I.A.S., -
Director of Town Planning,
Old High Court Buildings,
1st Line Beach, Madras-1.
-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-

To
The Secretary to Government,
Health, Education and Local
Administration Department,
Fort St. George, Madras-9.

Rec. No. 2193/54/A4, dated 15.4.54.

Sir,



Sub: BUILDINGS - Mangalore Municipality - Unauthorised construction of wooden bunk shop and vertical posts within - Violation of revised building rules - Council resolution in favour of the construction - Cancellation of the resolution - Remarks submitted.

Ref: Letter El-10070/53 dated 23.2.54 from the Commissioner, Mangalore Municipality to Government.

The letter of the Commissioner, Mangalore Municipality cited above is herewith forwarded to the Government with the following remarks:

The case in question relates to the construction of a bunk shop made of wood but provided also with wheels which has been permanently instituted over an existing pial within the front 4' open space already left in the Taj Mahal Cafe building in T.S. No. 341, Ward No. 14 of Mangalore Town. The bunk has apparently been provided with dummy wheels with a view to show that it is a moveable object while for all practical purpose the entire structure has been permanently affixed to the top of the raised pial. Whether the structure be with wheels or otherwise it still can be construed only as a building under the definition of 'building' given in sub section 3 of section 3 of the Madras District Municipalities Act and the fact that it has been kept fixed to the pial makes the bunk in addition a permanent fixture of the building. The Ad-hock Committee appointed by the Municipal Council would appear to have defined in its resolution No. 2 dated 3-12-53 that a bunk shop is a building as defined in the Madras District Municipalities Act and has quoted also a Lahore case in support of its argument that irrespective of whether it is put on a wheeled structure or not it is still a building and that ~~the~~ such a building will be subject to the Building Rules. It appears that the resolution of the Municipal Council in C.R. No. 5 dated 9.1.54 was on the question as to whether the structure will be deemed to be a building or otherwise and the Council has resolved that the structure will not be deemed to be a building and has decided accordingly on an appeal preferred to it by the owner for grant of permission for the same. It is apparent that the meeting of the council did not go smoothly and that there were dissenters.

The resolution of the Municipal Council in C.R. No. 5, dated 9.1.54 that bunk is not a building, is not in conformity with the provisions of the Act and as such the resolution of the Council should be deemed to have been passed in excess of the ~~own~~ powers of the Municipal Council. In this connection the remarks of the Chairman of the Municipal Council at page 49 of the Municipal file in para. 3 may be perused by the Government. The Chairman himself feels that the appeal petition should have been rejected by the Municipal Council. He also states that a similar bunk elsewhere had been treated by the Council as a building and was held as a violation of rule 9(2)(a) of the Building Rules.

In the above circumstances the Government may take necessary action to cancel the resolution of the Municipal Council directing that the building of the bunk would for the

P.t.o.

22

purposes of the Act, be a building and that the Building Rules shall apply.

12' on 17' and

With reference to the second portion of the resolution of the Council necessary action will be taken by the Department if and when the party makes an appeal to the Director of Town Planning for exempting the vertical pillars put up by the petitioner in the first and second floors of the building.

Encl. Michel file

ME:19.4. lua
20/4

G. J. J. J.
u. y. n.
For Director of Town Planning

40609/54

HEC
H2

(3)

Subj: Buildings. Mangalore
Municipality - unauthorised
construction of a wooden
bunk in the front verandah
of the Taj Mahal Cafe in TS no 341,
Ward no 14 - Violation of
Building Rules - Municipal
Councils resolution no 5 dt 9.1.54.
Cancellation of -

9
186

Ref: From the Commr, Mangalore
Mpty, E1/10070/53
dt 23/2/54

Mr A. C. C. from the D.T.P. Roc no. 2193/54
dt 15/4/54

Memo 40609^{H2}/54.2 Health, dt 10/6/54

8/10/54
C. A. N. + p 70f

In its resolution no 5 dated
9.1.54 the Mangalore Municipal
Council has held the view
that the bunk (provided
with wheels) erected in the
front verandah of the
Taj Mahal Cafe in TS no 341
of Mangalore Town is not
a building and that it
does not infringe rule
9(2)(a) of the Building
Rules. Building is defined
in the M.D.M. Act as follows:
"Building includes a
house, outhouse, stable, l.t.
shed, hut, wall (other than
boundary wall not exceeding
eight feet in height) and
any other such structure,

whether of masonry, bricks, wood, mud, metal or any other material whatsoever!"

As the bunk erected in the front verandah of the Cafe has been provided with wheels with a view to show that it is a moveable object, the council has come to hold the view that it is not a permanent structure and does not, therefore constitute a building. Although the wheels provided for the bunk shop create ^{at first sight} an impression that it is a moveable object it is for all practical purposes a static enclosure permanently affixed to the top of the raised platform. Whether the bunk is with the wheels or not it is still a 'building' as defined in the statute.

The view held by the Municipal Council is, therefore, not correct. Besides section 215 (2) of the M.D.M. Act empowers the M.L. Council to decide whether addition or alteration to a building is a necessary repair or not.

2. The Commr. Mangalore Municipality is requested to place the matter before the M.L. C. for reconsideration of its resolution no 5 dt. 9.1.54 and report the result to Govt. in due course.

3. The M.L. office file connected with the case is returned herewith to the Commr., Mangalore Municipality. He is requested to acknowledge its receipt.

2/5/54
14.5.54

15/5/54

17/5/54

For the Commr. Mangalore Municipality
(thru the Commr. Mangalore)
Copy to the M.L. C.

14/6

HS

on. It would appear that the majority of the municipal councillors who attended the meeting of the M.C. on 9.1.54 had held the view that a wooden bunk with a wheel at the bottom would not come within the purview of the 'building' as defined in the M.D.M. Act. The view held by the M.C. is wrong in the circumstances explained by the D.P. at 'N' on p. 9 of the correct position may be explained to the M.C. and it may be asked to reconsider its resolution no 5 dt. 9.1.54 before taking action as at 'M' on p. 9 of.

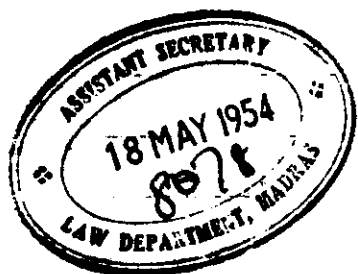
Draft overleaf is for approval. Law (op) may advise whether the position set out at 'K' in the draft is correct.

2/5/54
6/5/54
14.5.54
14/5
15/54

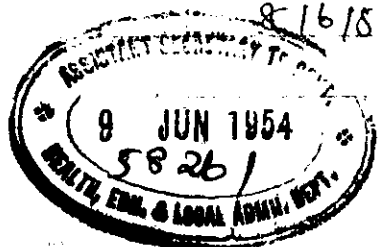
D.S.

SA
17/5/54

Health
40609/54.1. Health
17.5.54



Law NO 8078/54-1
8/6/54



Law (op)

Law Department

The draft is in order and may issue.

1402
8.6.54

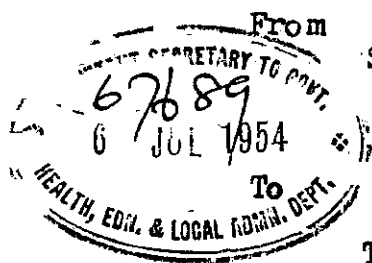
1402
8.6.54
DS (op)

Issue
4/9/54

HEALTH

E1. 10070/53.

Municipal Office, Mangalore,
Dated 23rd June 1954.



From

Sri A.K.Raghavan, B.A., B.L.,
Commissioner, Mangalore Municipality,
Mangalore.

The Secretary to the Government of Madras,
Health, Education and Local Administration
Department, Madras

Thro'

The Chairman, Municipal council, Mangalore.

Sir,

Buildings - Mangalore Municipality - Unauthorised
construction of a wooden bunk in the front verandah of the
Taj Mahal Cafe in T.S.No. 341 ward No.14 - violation of
Building Rules - Municipal council's resolution No.5 dated
9th January 1954 - file of papers - receipt acknowledged.

Ref. Government Memorandum No.40609 HV/54-2 Health,
dated 10th June 1954.

I acknowledge receipt of the file of papers
E1/10070/53 (pages 66) received along with the Government
Memo cited above.

(Signature)
Commissioner, M.M

Forwarded.

(Signature)
Chairman, M.C.

h/26-6 *(Signature)*

HERA
HR
May be added to the
memo no 40609 HV/54.2.
Health dt 10/6/54 at ✓

(Signature)
8/7/54
8.7.54

(Signature)
9/8/54

455-2

HS

41

The Secretary to Government,
Education, Health & Local Administration
Department, Madras

The Chairman, Municipal Council, Mangalore.

Thro'

Buildings - Unauthorised construction of wooden bunk in front verandah of Taj Mahal Cafe - T.S.No. 341 of 14th ward - Violation of Building Rules - Municipal Council resolution - Cancellation of - Intimating.

8.11.11

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W. W. Quotson, M. M.

Chairman, M.C.
11/8

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EJ 10070-53

Extract from the proceedings of the Mangalore
Municipal council, dated 23-7-1954.

Sub:- Buildings - Mangalore Municipality - Unauthorised
construction of a wooden bunk in front verandah of the Taj-
Mahal Cafe in T.S.No. 341, ward No.14 - violation of building
rules - reconsideration of council resolution - requested.

(N) 11-13
Government Memorandum No. 40609/HV/54-2 Health, dated
10-6-1954 suggesting that the council may reconsider its
resolution No.5 dated the 9th January 54 regarding the un-
authorised construction of a wooden bunk in the front
verandah of the Taj Mahal Cafe in T.S.No. 341, ward No.14
as the Bunk (referred to) even though it is provided with
wheels, is for all practical purposes a static enclosure
permanently affixed to the top of the raised pial and
therefore constitutes a 'building' as defined in the statute

Council resolution No. 1335 D/23-7-1954

(N) 11-13
In view of the Govt. Memo No. 40609/HV/54-2
Health, D/10-6-1954 the council holds that the bunk
in question kept on the pial of the building in T.S
No. 34/1 D.No.104 of 14th ward is a building within the
meaning of that word in the M.D.M. Act and Rule 9(2)(a)
of the Revised Building Rules is violated. Hence the bunk
cannot be allowed to be continued. The appeal is rejected.

sd.K.S.N.Adiga,
Chairman, M.C.

(True copy)

Commissioner, M.M
Commissioner, M.M

h/7-8

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7/8